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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AKAMAI TECHNOLOGIES, INC.,

Plaintiff,

vs.

MEDIAPOINTE, INC. and AMHC, INC.,

Defendants.

MEDIAPOINTE, INC.,

Counterclaimant,

vs.

AKAMAI TECHNOLOGIES, INC.,

Counterclaim-
Defendant.

Case No. 2:22-cv-06233-MCS-AFM

**PLAINTIFF AKAMAI
TECHNOLOGIES, INC.'S
MEMORANDUM AND POINTS OF
AUTHORITIES IN SUPPORT OF
ITS MOTION TO DISMISS
DEFENDANT MEDIAPOINTE,
INC.'S COUNTERCLAIMS FOR
WILFUL AND INDUCED
INFRINGEMENT**

Hearing Date: December 5, 2022

Time: 9:00 AM

Location: Courtroom 7C, 7th Floor

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1 Plaintiff and Counterclaim Defendant Akamai Technologies, Inc. (“Akamai”) respectfully moves pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss MediaPointe Inc.’s (“MediaPointe”) counterclaims for willful and induced infringement of United States Patent No. 8,559,426 (“’426 Patent”).¹ See Dkt. 36 (“Counterclaims”).

5 I. INTRODUCTION

6 In response to Akamai’s declaratory judgment complaint, MediaPointe asserts counterclaims of willful and induced infringement of the ’426 patent but fails to plead any factual support for these serious allegations.

9 **First**, to state a claim for willfulness, MediaPointe is required to plead facts showing that Akamai had a **specific intent** to infringe the ’426 patent. *BASF Plant Sci., LP v. Commonwealth Sci. & Indus. Rsch. Org.*, 28 F.4th 1247, 1274 (Fed. Cir. 11 2022) (“To establish willfulness, a patentee must show that the accused infringer had a **specific intent to infringe** at the time of the challenged conduct.”); *Halo Elecs., Inc. v. Pulse Elecs., Inc.*, 579 U.S. 93, 103-04 (2016) (“[E]nhanced damages ... are 15 not to be meted out in a typical infringement case, but are instead designed as a ‘punitive’ or ‘vindictive’ sanction for egregious infringement behavior.”).²

17 MediaPointe does not come close to meeting this standard. It does not plead any facts that could show that Akamai possessed a specific intent to infringe or that 19 Akamai’s conduct was “blatant” or “egregious.” Instead, MediaPointe merely points to Akamai’s knowledge of the ’426 patent since the filing of MediaPointe’s prior lawsuit against Akamai in August 2021 and then asserts in one conclusory sentence—**without providing a single alleged supporting fact**—that Akamai’s 23 alleged infringement is “willful and deliberate.” Counterclaims ¶ 49. This is

25 ¹ MediaPointe has not asserted willful or induced infringement claims with respect to the other asserted patent in this case, U.S. Patent No. 9,426,195 (“’195 patent”).

27 ² Emphases added unless otherwise indicated.

insufficient as a matter of law. *See, e.g., Upstream Holdings, LLC v. Brekunitch*, No. 2:22-cv-3513-MCS-RAO, Dkt. 48 at 2-3 (C.D. Cal. Sep. 30, 2022) (Scarsi, J.) (dismissing willfulness claim because pleading “d[id] not include any additional facts concerning [alleged infringer’s] intent in allegedly infringing the [Asserted] Patent”); *Ravgen, Inc. v. Quest Diagnostics Inc.*, No. 2:21-cv-9011-RGK-GJS, 2022 WL 2047613, at *2 (C.D. Cal. Jan. 18, 2022) (dismissing willfulness claim: “[T]o properly plead willful infringement, a plaintiff must allege facts that plausibly show a defendant knew or should have known of the patent, yet continued to infringe so blatantly that their actions were ‘characteristic of a pirate.’”).

Second, to state a claim of induced infringement, MediaPointe is required to plead facts showing that Akamai had a ***specific intent to induce others to infringe the patent***. *See DSU Med. Corp. v. JMS Co.*, 471 F.3d 1293, 1304-06 (Fed. Cir. 2006) (en banc). MediaPointe again fails to even come close to meeting this standard. Instead, it asserts only that Akamai “disseminat[ed]” marketing materials and instructions relating to the Akamai services that are accused of infringement. Counterclaims ¶ 30. But merely providing marketing and instructions to customers—something that all product companies must do in the ordinary course of their business—is not enough to show the specific intent necessary to sustain an inducement allegation. *See Takeda Pharms. U.S.A., Inc. v. West-Ward Pharm. Corp.*, 785 F.3d 625, 631 (Fed. Cir. 2015) (merely describing a potentially infringing use in product instructions is insufficient to show intent to induce infringement).

Accordingly, MediaPointe’s conclusory allegations of willful and induced infringement are devoid of any factual support, utterly fail to meet the pleading standard, and should be dismissed. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“[A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007) (“[A] conclusory allegation ... does not supply facts adequate to show

1 illegality.”).

2 **II. FACTUAL BACKGROUND**

3 On August 16, 2021, MediaPointe sued Akamai for alleged infringement of
4 the ’426 patent and the ’195 patent (collectively “Asserted Patents”) in the U.S.
5 District Court for the Western District of Texas (“WDTX Action”). MediaPointe
6 voluntarily dismissed the WDTX Action on February 10, 2022, but did so without
7 prejudice to refiling its claims. Facing MediaPointe’s ongoing threat of infringement
8 assertions, on September 1, 2022, Akamai filed its Complaint in the present Action
9 seeking a declaratory judgment of non-infringement. *See* Dkt. 1 (Complaint). On
10 September 30, 2022, Akamai filed a First Amended Complaint to provide, among
11 other things, additional detail regarding Akamai’s non-infringement claims in which
12 it articulated multiple reasons it does not infringe the Asserted Patents. Dkt. 29
13 (“FAC”).³

14 On October 17, 2022, MediaPointe answered Akamai’s FAC and asserted
15

16 ³ This Court dismissed Akamai’s complaint in a prior declaratory judgment action
17 based on Akamai’s allegation in its prior declaratory judgment complaint that
18 MediaPointe and its parent AMHC, Inc. did not then own the Asserted Patents. *See*
19 *Akamai Techs., Inc. v. MediaPointe, Inc.*, No. 2:22-cv-982-MCS-AFM, Dkt. 45
20 (C.D. Cal. Aug. 31, 2022). In this Action, based on developments occurring after
21 Akamai filed its February 11, 2022 complaint in the prior declaratory judgment
22 action, Akamai has alleged that (as of the filing of Akamai’s Complaint in this
23 Action on September 1, 2022) MediaPointe and AMHC now own the rights to the
24 Asserted Patents. *See* FAC ¶¶ 9, 18-23, 39-44. In its Counterclaims, MediaPointe
25 pleads that it “owns all substantial rights in the Asserted Patents, including the right
26 to assert all causes of action under the Asserted Patents and the right to any remedies
27 for the infringement of the Asserted Patents.” Counterclaims ¶ 20.
28

1 counterclaims for direct infringement (as to both patents), induced infringement (as
2 to the '426 patent alone), and willful infringement (as to the '426 patent alone).
3 Counterclaims ¶¶ 21-47, 49.

4 **A. MediaPointe's Deficient Willful Infringement Counterclaim**

5 MediaPointe's willfulness allegation is limited to the '426 patent.
6 Counterclaims ¶ 49. MediaPointe asserts in its infringement allegations that Akamai
7 has known of the '426 patent since MediaPointe's complaint in the WDTX Action
8 (*id.* ¶ 35) and that "Akamai has directly infringed ... the '426 patent" "[e]ven after
9 having knowledge of the '426 patent" (*id.* ¶ 25). Then, in a single conclusory
10 sentence in the very last numbered paragraph of the counterclaims, MediaPointe
11 alleges that "[t]o the extent that Akamai's willful and deliberate infringement or
12 litigation conduct supports a finding that this is an 'exceptional case,' an award of
13 attorneys' fees and costs to MediaPointe is justified pursuant to 35 U.S.C. § 285."
14 *Id.* ¶ 49. Based on that threadbare allegation, MediaPointe's "Prayer for Relief" then
15 asks the Court to "[d]eclar[e] that Akamai has willfully infringed ... the '426 patent"
16 and seeks "enhanced damages" for willful infringement "pursuant to 35 U.S.C.
17 § 284." *Id.* at 16.

18 MediaPointe does not provide any facts showing that Akamai acted with any
19 specific intent to infringe the '426 patent.⁴ Nor does MediaPointe allege any facts
20 showing Akamai engaged in any conduct that is egregious, wanton, malicious, bad
21 faith, consciously wrongful, flagrant, or characteristic of a pirate.

22
23 ⁴ MediaPointe's willfulness claim is limited to the time period following its
24 complaint in the WDTX Action (Counterclaims ¶ 35)—MediaPointe does not allege
25 that Akamai had knowledge of the '426 patent prior to that date. *See State Indus.,*
26 *Inc. v. A.O. Smith Corp.*, 751 F.2d 1226, 1236 (Fed. Cir. 1985) ("To willfully
27 infringe a patent, the patent must exist and one must have knowledge of it.").
28

B. MediaPointe's Deficient Induced Infringement Counterclaim

MediaPointe’s induced infringement allegations are also limited to the ’426 patent after the filing of MediaPointe’s complaint in the WDTX Action. Counterclaims ¶¶ 30-35. MediaPointe asserts that, after the date of that complaint, Akamai induced others to allegedly infringe “through the dissemination” of the Akamai services at issue and unidentified marketing, promotional, and instructional materials about these services. *Id.* ¶ 30. MediaPointe alleges that Akamai sold its services, advertised them, instructed users to utilize its services, and offered support and technical assistance to customers. *Id.* ¶¶ 30-32 (allegations limited to “selling access to [Akamai’s] CDN and encouraging users to operate devices on that network” and “advertising and marketing Akamai’s CDN services, marketing and selling of devices capable of or intended for use on Akamai’s CDN, publishing manuals and promotional literature describing and instructing users to utilize Akamai’s CDN, and offering support and technical assistance to its customers”).

MediaPointe does not identify a single specific marketing, promotional, or instructional statement that Akamai allegedly made and that MediaPointe contends constituted an attempt to induce infringement of the '426 patent (let alone explain how such unidentified material could amount to an attempt to induce infringement). Nor does MediaPointe allege any other acts or statements by Akamai that could possibly show that Akamai specifically intended to induce others to infringe the '426 patent.

III. ARGUMENT

To state a claim, a plaintiff must allege and provide factual support for each element of the claim. *See Iqbal*, 556 U.S. at 678 (“[A] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.”). Merely reciting the elements of a claim and providing “conclusory statements” without factual support is inadequate. *See id.* at 678; *Twombly*, 550 U.S.

1 at 557 (“[A] conclusory allegation ... does not supply facts adequate to show
2 illegality.”). Couching legal conclusions as factual allegations is also insufficient.
3 *Ukiru v. Fed. Home Loan Mortg. Corp.*, 602 F. App’x 395, 396 (9th Cir. 2015)
4 (“[T]he court is not required to accept legal conclusions cast in the form of factual
5 allegations if those conclusions cannot reasonably be drawn from the facts alleged.”
6 (quoting *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994))).
7 Instead, a plaintiff must allege **facts** that, if taken as true, allow the court to draw the
8 reasonable inference that the defendant is actually liable for the alleged misconduct.
9 *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014) (“[A]llegations in a ...
10 counterclaim ... may not simply recite the elements of a cause of action, but must
11 contain sufficient allegations of underlying facts to give fair notice and to enable the
12 opposing party to defend itself effectively.”).

13 MediaPointe’s allegations of willful and induced infringement do not come
14 close to meeting this pleading standard.

15 **A. MediaPointe’s Willful Infringement Claim Should Be Dismissed**

16 “Willfulness requires ***deliberate or intentional infringement.***” *Bayer*
17 *Healthcare LLC v. Baxalta Inc.*, 989 F.3d 964, 988 (Fed. Cir. 2021). “Knowledge
18 of the asserted patent and evidence of [the alleged] infringement is necessary, but
19 not sufficient,” to meet this standard. *Id.* To sustain a willfulness claim, a pleading
20 thus must allege facts that plausibly show—with factual not merely conclusory
21 allegations—that the defendant acted with a “***specific intent to infringe.***” *See BASF*,
22 28 F.4th at 1274. Further, a claim for enhanced damages based on willful
23 infringement requires allegations of and supporting facts showing “willful
24 misconduct” that is “wanton,” “malicious,” “bad-faith,” “consciously wrongful,”
25 “flagrant,” or “characteristic of a pirate.” *Halo*, 579 U.S. at 103-04; *see also Smith*
26 *v. Extreme Performance 1, LLC*, No. 5:20-cv-328-RGK-SHK, 2020 WL 5092913,
27 at *5 (C.D. Cal. June 23, 2020) (dismissing willful infringement claim, observing
28

1 that a “majority [of Ninth Circuit district courts] has concluded that although
2 knowledge and continued infringement are prerequisites to showing willfulness, a
3 plaintiff must also show that the defendant engaged in egregious misconduct”).

4 MediaPointe’s willful infringement and enhanced damages claim does not
5 satisfy this standard. The entirety of MediaPointe’s allegation is a ***single conclusory***
6 ***sentence*** asserting—without explanation or factual support—that the alleged
7 infringement was willful and deliberate: “To the extent that Akamai’s willful and
8 deliberate infringement or litigation conduct supports a finding that this is an
9 ‘exceptional case,’ an award of attorneys’ fees and costs to MediaPointe is justified
10 pursuant to 35 U.S.C. § 285.” Counterclaims ¶ 49. This allegation fails for at least
11 two reasons.

12 ***First***, MediaPointe does not plead any facts that, even if accepted as true,
13 could show that Akamai deliberately or intentionally infringed the ’426 patent.
14 MediaPointe’s counterclaim does not describe even a single statement, document,
15 or event that could in any way show Akamai ever specifically intended to infringe
16 the ’426 patent. And MediaPointe cannot plausibly allege willfulness based on the
17 mere fact that Akamai did not stop providing its services simply because
18 MediaPointe filed (and then dismissed) its original claims for infringement. *See*
19 *Wrinkl, Inc. v. Facebook, Inc.*, No. 20-cv-1345-RGA, 2021 WL 4477022, at *7 (D.
20 Del. Sept. 30, 2021) (“[I]t is not sufficient merely to allege the defendant has
21 knowledge since the filing of the original complaint and has not ceased doing
22 whatever the infringing behavior is alleged to be. ... Such [willfulness] allegations
23 are not plausible.”). Willful infringement and enhanced damages are not for
24 “garden-variety cases,” *Halo*, 579 U.S. at 109—MediaPointe’s threadbare
25 willfulness allegations do not come close to stating a willfulness claim. *Bayer*, 989
26 F.3d at 988 (“[W]illfulness requires deliberate or intentional infringement.”); *BASF*,
27 28 F.4th at 1274; *Upstream Holdings, LLC v. Brekunitch*, No. 2:22-cv-3513-MCS-

1 RAO, Dkt. 36 at 2 (C.D. Cal. Aug. 3, 2022) (Scarsi, J.) (dismissing willfulness claim
2 because “[n]othing in the complaint provides specific factual allegations about
3 [Defendants’] subjective intent or details about the nature of [Defendants’] conduct
4 to render a claim of willfulness plausible, and not merely possible”); *Finjan, Inc. v.*
5 *Cisco Sys. Inc.*, No. 17-cv-72-BLF, 2017 WL 2462423, at *5 (N.D. Cal. June 7,
6 2017) (dismissing willfulness claim where plaintiff failed to make “specific factual
7 allegations about [defendant’s] subjective intent”); *Wrinkl*, 2021 WL 4477022, at *8
8 (“[I]t should not be the case that every patent infringement lawsuit is automatically
9 a willful infringement case. But if all that is required is the filing of a complaint and
10 a plausible allegation of infringement, then every case would be a willful
11 infringement case.”).

12 ***Second***, MediaPointe nowhere even alleges let alone pleads facts showing that
13 Akamai committed misconduct that is “wanton, malicious, bad-faith, ... consciously
14 wrongful, flagrant, or ... characteristic of a pirate.” *Halo*, 579 U.S. at 103–04. This
15 is also fatal to MediaPointe’s claim for enhanced damages based on alleged
16 willfulness. *Ravgen*, 2022 WL 2047613, at *2 (“***To properly plead willful***
17 ***infringement***, a plaintiff must allege facts that plausibly show a defendant knew or
18 should have known of the patent, yet continued to ***infringe so blatantly that their***
19 ***actions were characteristic of a pirate.***”); *Dali Wireless, Inc. v. Corning Optical*
20 *Commc’ns LLC*, No. 20-cv-6469-EMC, 2022 WL 1426951, at *4 (N.D. Cal. May 5,
21 2022) (dismissing willfulness claim because plaintiff “fail[ed] to establish egregious
22 conduct”); *CellControl, Inc. v. Mill Mountain Cap., LLC*, No. 7:21-cv-246, 2022
23 WL 598752, at *5 (W.D. Va. Feb. 28, 2022) (dismissing willfulness claim because
24 allegations “d[id] not rise to the level of infringing conduct sufficiently egregious to
25 state a claim for willful infringement.”); *Mich. Motor Techs. LLC v. Volkswagen*
26 *AG*, 472 F. Supp. 3d 377, 385 (E.D. Mich. 2020) (“allegations in the [Second
27 Amended Complaint] [we]re not sufficient to allege willful infringement” where
28

1 “plaintiff never alleged facts that could support a conclusion that the defendants’
2 conduct rose to the level of egregiousness that might support an award of enhanced
3 damages”).

4 MediaPointe’s bare assertion that Akamai has known of the ’426 patent since
5 MediaPointe’s complaint in the WDTX Action (Counterclaims ¶ 35) or that
6 “Akamai has directly infringed ... the ’426 patent” “[e]ven after having knowledge
7 of the ’426 patent” (*id.* ¶ 25) does not save its willfulness claim. Simply alleging
8 that the defendant knew of the asserted patent and has allegedly infringed is
9 insufficient as a matter of law to state a claim for willfulness. As the Federal Circuit
10 recently emphasized, “[k]nowledge of the asserted patent and evidence of
11 infringement is necessary, but **not sufficient**, for a finding of willfulness.” *Bayer*,
12 989 F.3d at 988; *see Halo*, 579 U.S. at 110 (Breyer, J., concurring) (“[T]he Court’s
13 references to ‘willful misconduct’ do not mean that a court may award enhanced
14 damages simply because the evidence shows that the infringer knew about the patent
15 and nothing more.”); *Intellectual Ventures I LLC v. Symantec Corp.*, 234 F. Supp.
16 3d 601, 611-12 (D. Del. 2017) (“pre-suit knowledge alone” or combined with
17 “typical infringement” is “not sufficient to support a finding of willful
18 infringement”).

19 There is good reason for this rule. If simply asserting in a single sentence that
20 the defendant has knowledge of the asserted patent were sufficient to plead willful
21 infringement and enhanced damages, there would be a viable claim of willfulness
22 and enhancement in every case. But as this and many other Courts have recognized,
23 that is not the law. *Upstream Holdings, LLC v. Brekunitch et al.*, No. 2:22-cv-3513-
24 MCS-RAO, Dkt. 48 at 2-3 (C.D. Cal. Sep. 30, 2022) (Scarsi, J.) (dismissing
25 willfulness claim: “Allegations of knowledge and continued infringement, alone, are
26 insufficient to show the type of egregious conduct warranting enhanced damages.”);
27 *see also Document Sec. Sys., Inc. v. Seoul Semiconductor Co.*, No. 17-cv-981-JVS,
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1 2018 WL 6074582, at * 2 (C.D. Cal. Feb. 5, 2018) (“allegations of knowledge alone
2 are not sufficient to state a claim for willful infringement”).

3 Moreover, that a defendant does not immediately stop providing its
4 products/services when a plaintiff files an infringement case does not constitute
5 wanton, malicious, or bad-faith activity. *Altair Instruments, Inc. v. Walmart, Inc.*,
6 No. 2:18-cv-9461-R-FFM, 2019 WL 7166060, at *2 (C.D. Cal. Sep. 25, 2019)
7 (granting motion to dismiss: “Allegations of knowledge and continued infringement
8 are generally *insufficient* to show that enhanced damages are warranted.”). As noted
9 above, were the rule otherwise, there would be a viable willfulness claim in nearly
10 every case. That is not the law. *Ravgen*, 2022 WL 2047613, at *3 (“[W]here a
11 Defendant continues their allegedly infringing operation after they are sued, they
12 may simply subjectively believe[] the plaintiff’s patent infringement action has no
13 merit.”). Indeed, MediaPointe’s willfulness allegation fails to even address that
14 Akamai’s declaratory judgment claims articulated multiple reasons why Akamai
15 does *not* infringe.

16 MediaPointe’s willful infringement and enhanced damages claim should
17 therefore be dismissed.

18 **B. MediaPointe’s Induced Infringement Claim Should Be Dismissed**

19 To state a claim for induced infringement of the ’426 patent, MediaPointe
20 must plead facts showing that: (1) Akamai knew of the ’426 patent; (2) Akamai
21 knowingly induced a third party to infringe the patent; (3) Akamai had *specific*
22 *intent to induce the third party to infringe* the patent; and (4) as a result of the
23 supposed inducement, the third party directly infringed the patent. *DSU Med. Corp.*,
24 471 F.3d at 1305-06.

25 The Federal Circuit has made clear that the “specific intent” element of an
26 inducement claim requires not only that the defendant knew of the asserted patents
27 and intended to cause the acts that allegedly caused the infringement, *but also that*
28

1 *the defendant had an affirmative intent to cause infringement.* *Glob.-Tech*
2 *Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 760-66 (2011) (induced infringement
3 requires “actively induc[ing] another to take some action” with the “knowledge that
4 the induced acts constitute patent infringement.”).

5 District Courts have similarly made clear that under this well-established law,
6 simply asserting that the defendant encouraged the acts that supposedly infringe is
7 not enough—instead, the plaintiff must allege facts showing that the defendant
8 culpably intended to encourage infringement. *Monolithic Power Sys., Inc. v. Meraki*
9 *Integrated Circuit (Shenzhen) Tech., Ltd.*, No. 6:20-cv-8876-ADA, 2021 WL
10 3931910, at *5 (W.D. Tex. Sept. 1, 2021) (explaining that “there must be facts
11 alleging a specific intent to induce the direct infringer” to adequately plead a claim
12 of induced infringement); *epicRealm, Licensing, LLC v. Autoflex Leasing, Inc.*, 492
13 F. Supp. 2d 608, 634 (E.D. Tex. 2007) (“[M]ere knowledge alone of possible
14 infringement by others does not amount to inducement; specific intent and action to
15 induce infringement must be proven.”).

16 MediaPointe fails to allege any facts that could show that Akamai possessed
17 a specific intent to induce infringement. MediaPointe simply asserts that, after the
18 filing of the WDTX Action, Akamai has “disseminat[ed]” the technologies that
19 MediaPointe accuses, along with unidentified marketing, promotional, and
20 instruction materials about the relevant services. Counterclaims ¶¶ 30-35. These
21 allegations fail for three reasons.

22 **First**, MediaPointe has not alleged anything that could show that Akamai
23 affirmatively intended to infringe the ’426 patent. At most, MediaPointe’s
24 allegations establish nothing more than that Akamai continued to engage in its
25 business of selling its services and providing its customers with information about
26 its services. It is well settled that this alone does not show specific intent to infringe
27 (or induce others to infringe). *See MONEC Holding AG v. Motorola Mobility, Inc.*,
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1 897 F. Supp. 2d 225, 234 (D. Del. 2012) (dismissing inducement claim because
2 conclusory allegations regarding Defendants’ “selling, advertising, supplying and
3 instructing its respective customers on the use of the infringing product” do not
4 “demonstrate that Defendants knew such activities were infringing or that
5 Defendants possessed the specific intent to encourage another’s infringement”); *see*
6 *also Google LLC v. Princeps Interface Techs. LLC*, No. 19-CV-6566-EMC, 2020
7 WL 1478352, at *4 (N.D. Cal. Mar. 26, 2020) (dismissing induced infringement
8 counterclaim because accused infringer “fil[ed] an action seeking declaratory
9 judgment of noninfringement ... which can negate the specific intent required for
10 induced infringement” and inducement counterclaim “ha[d] not made a convincing
11 case to the contrary”).

12 **Second**, MediaPointe never even identifies a specific marketing, promotional,
13 or instructional statement that Akamai allegedly made nor provides any facts
14 showing how any such statement could plausibly show that Akamai had an
15 affirmative intent to cause infringement of the ’426 patent. *See Addiction &*
16 *Detoxification Inst. v. Carpenter*, 620 F. App’x 934, 938 (Fed. Cir. 2015) (affirming
17 dismissal of inducement claim because “[s]imply repeating the legal conclusion that
18 Defendants induced infringement ... does not plead ‘factual content that allows the
19 court to draw the reasonable inference that the defendant is liable for the misconduct
20 alleged’”); *Superior Indus., LLC v. Thor Glob. Enters.*, 700 F.3d 1287, 1296 (Fed.
21 Cir. 2012) (a complaint that “does not allege any facts to support a reasonable
22 inference that [defendant] specifically intended to induce infringement ... or that it
23 knew it had induced acts that constitute infringement,” is insufficient to state a
24 claim); *Princeps*, 2020 WL 1478352, at *4 (in declaratory judgment action,
25 dismissing counterclaim for induced infringement because allegations regarding
26 “instructional materials” were “wholly inadequate for an inference of specific intent”
27 where counterclaim “does not ever say what those materials contain” and “does not
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1 even provide specific instructional materials ... as examples” (cleaned up)); *Affinity*
2 *Labs of Texas, LLC v. Blackberry Ltd.*, No. 6:13-cv-362, 2014 WL 12551207, at *6
3 (W.D. Tex. Apr. 30, 2014) (where a plaintiff “does not specify how the marketing
4 and selling activities ... actually induced third-parties to infringe” a court is “unable
5 to draw reasonable inferences of a viable induced infringement claim based on
6 [such] conclusory and speculative facts”).

7 **Third**, it is well established that simply providing services and instructing
8 customers how to use products does not alone show an affirmative intent to induce
9 infringement. *Takeda*, 785 F.3d at 630-31 & n.3 (instructions that describe an
10 allegedly “infringing mode” do not show intent to induce; instead, inducement
11 requires taking “active steps” to encourage direct infringement); *Stragent, LLC v.*
12 *BMW of North America, LLC*, No. 6:16-cv-446-RWS-KNM, 2017 WL 2821697, at
13 *9-10 (E.D. Tex. Mar. 3, 2017) (dismissing indirect infringement claim where
14 complaint pleads only “that the Defendants provide customers with infringing
15 devices along with instructions”); *Memory Integrity, LLC v. Intel Corp.*, 144 F.
16 Supp. 3d 1185, 1196-98 (D. Or. 2015) (reference to defendant’s product instructions,
17 without more, insufficient to show specific intent to infringe); *Straight Path IP Grp.*
18 *v. Vonage Holdings Corp.*, No. 14-cv-502, 2014 WL 3345618, at *2 (D.N.J. July 7,
19 2014) (allegations that defendants instructed customers how to use accused products
20 insufficient to establish that “Defendants ***specifically intended*** for the induced acts
21 to infringe”).

22 Virtually all companies need to provide marketing and instructional materials
23 to customers in order to support their business. If this were sufficient to show
24 specific intent, the specific intent requirement of induced infringement would be
25 essentially meaningless, and induced infringement would be reduced to a strict
26 liability offense. That is not the law. *Takeda*, 785 F.3d at 630-31 (product
27 instructions merely “describ[ing] the [allegedly] infringing mode” insufficient for
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1 inducement—instead, “such instructions need to evidence intent to *encourage*
2 infringement” such as by “suggesting that an infringing use ‘should’ be performed”
3 (emphasis in original)); *Cal. Beach Co. v. Exqline, Inc.*, No. 20-cv-1994-WHA, 2020
4 WL 6544457, at *3 (N.D. Cal. Nov. 7, 2020) (dismissing inducement claim where
5 patent owner “allege[d] no more than [defendant’s] ordinary course of business
6 toward all its merchants” because “induced infringement does not turn merely on a
7 defendant’s role in a product chain, but requires the defendant’s affirmative action
8 to recommend, encourage, promote, or suggest infringement”).

9 MediaPointe’s allegations of induced infringement thus also should be
10 dismissed.

11 **IV. CONCLUSION**

12 The purpose of the pleading rules is to show that the claimant actually has
13 sufficient facts to proceed and to fairly put the defendant on notice of the basis of
14 the claimant’s allegations. MediaPointe’s allegations of willful and induced
15 infringement do neither. MediaPointe’s complaint does not plead any facts that
16 could possibly support these claims. Under *Iqbal* and *Twombly*, MediaPointe’s
17 claims for willful and induced infringement should be dismissed with prejudice.
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Respectfully submitted,

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